IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7792 OF 2005

Mrs. Savitri Shivaji Kumbhar
Age: 34, Residing at Lane No.8,
Jaysingpur, Taluka Shirol,
Dist: Kolhapur. ...Petitioner

Vs.

1. The State of Maharashtra
through its Secretary,
Social Welfare, Cultural, Affairs,
Sports Department, Mantralaya
Mumbai 400 032.

2. The Divisional Caste
Certificate Scrutiny Committee,
Pune Division, Pune through
its Secretary.

3. The Collector, Kolhapur

4. The Tahsildar, Shirol, Taluka Shirol
Dist: Kolhapur.

5. Jaysingpur Municipal Council
Jaysingpur, Taluka Shirol,
Dist: Kolhapur.

6. The State of Election Commission
Mumbai.

7. Mrs. Swati Dattatraya Sutar
Age: Adult, residing at Lane No.9
Jaysingpur, taluka Shirol
Dist: Kolhapur. ...Respondents

Shri. R.G.Ketkar Advocate for Petitioner
Shri. C.R.Sonawane, A.G.P. for Respondents 1 to 4
Shri. G.M.Savgave Advocate for Respondent no.5
Shri. Rupesh Bobde i/b. Shri R.V.More Advocates for Respondent No.6
Shri. Vijay Killedar Advocate for Respondent no.7

ORAM: SHRI. R.M.S.KHANDEPARKAR &
SMT. ROSHAN DALVI, JJ.
DATED : 22ND MARCH, 2006

ORAL JUDGMENT (PER R.M.S.KHANDEPARKAR, J.)

1. Heard.

2. The Petitioner challenges the Government Resolution dated 24th August, 1995 and the order dated 2nd November 2005 passed by the 2nd respondent on the basis of the said resolution denying the petitioner the benefit available to the persons belonging to O.B.C. category in the State of Maharashtra, on the ground that, she was not the resident of the State of Maharashtra on 13th October, 1967.

3. The Petitioner who was the ordinary resident of village Mankapur in Tal: Chikodi, Dist: Belgaum, State of Karnataka was married in the year 1986 to one Shivaji Laxman Kumbhar, ordinary resident of Jaysingpur, Tal: Shirol, Dist: Kolhapur in the State of Maharashtra. Shivaji Laxman Kumbhar belongs to Hindu Kumbhar caste recognized as OBC caste in the State of Maharashtra. Since her marriage, the petitioner resides at her matrimonial house at Jaysingpur. She also got her name enrolled as the voter for the Legislative Assembly Election since 1991. On 2nd December 2001 the petitioner contested the election to the post of President of Jaysingpur Municipal Council as OBC category candidate. None raised any objection for the Petitioner contesting the election as OBC candidate. It was only after her election as President of Jaysingpur Municipal Council, that the respondent no.7 lodged a complaint to various authorities including the respondent nos.1 and 6. Consequently, the caste certificate of the petitioner was referred to the respondent no.2 for its verification and the Vigilence squade submitted its report on 2nd December 2002. Based on the Government Resolution dated 24th August 1995, the respondent no.2 revoked the caste certificate of the petitioner which decision was sought to be challenged by the petitioner by filing Writ Petition No.734 of 2002. This

Court by its order dated 13th September 2005 set aside the order of the respondent no.2 dated 2nd December 2002 and also consequently order of 5th December 2002 passed by the Collector of Kolhapur and remanded the case of the respondent no.2 for reconsideration of the entire matter.

4. The respondent no.2 after hearing the parties by the impugned order though upheld the claim of the petitioner that she belongs to Kumbhar caste recognized as OBC in the State of Maharashtra , she is not entitled to claim the benefits and advantages available to the OBC category persons in the State of Maharashtra as she was not the resident of State of Maharashtra on 13th October 1967 and being so not entitled for those benefits in terms of the Government Resolution and constitutional mandates. Hence, the present petition.

5. It is the case of the petitioner that in so far as the power of the State Government to issue the instructions and to make the laws in relation to the persons belonging to the OBC are concerned, in the absence of any entry either in the State List or concurrent list in the seventh schedule of the Constitution of India, the restriction sought to be imposed by the State of Maharashtra on the migrant OBC category persons in the impugned resolution

is bad in law and not enforceable, and for the same reason the decision based on such resolution is also bad in law. The decision of the Apex Court in Action Committee Vs. Union of India reported in 1994(5) SCC 244 was in relation to provisions of Article 341 and 342 of the Constitution and pertaining to migration of the person belonging to Scheduled Caste and Scheduled Tribe from one State to another and therefore, cannot be applied to OBC persons and hence, the said Government Resolution is illegal and needs to be set aside. It is her further case that consequent to her marriage she has migrated to the State of Maharashtra and her husband belongs to Kumbhar caste which is recognized as OBC caste in the State of Maharashtra and she having become ordinary resident of Jaysingpur (Maharashtra) and having become member of the family of OBC persons, there was no reason for the Scrutiny Committee to deny her the benefits as available to other OBC persons in the State of Maharashtra.

6. On the other hand, it is the case of the Respondents that the law on the point that the migrant from one State belonging to a particular caste to another State merely because in the latter State there is recognition to the same caste, the migrants cannot claim facilities in the migrated

State is well established by the decision in the Action Committee case and the circular/Resolution dated 24th August 1995 is squarely based on the said decision of the Apex Court. The said Circular/Resolution clearly clarifies that the facilities of getting caste certificate in migrated State is extended only with a view that the applicants need not go to his native place for obtaining caste certificate but that by itself cannot entitle him to claim facilities and concessions in the State of Maharashtra. The issue as to whether person already belonging to the State of Maharashtra is migrant or not has to be decided with reference to the date of 13th October 1967 in terms of Government resolution dated 1st November 1985 and the same having been decided by the Scrutiny Committee no fault can be found with the impugned order. Besides the caste certificate having been issued for a limited purpose of obtaining the facilities under the Central Government, the petitioner is not entitled to claim facilities and concessions in the State of Maharashtra.

7. As far as issue relating to absence of power to the State Government to deal with the subject relating to migration from one State to another undoubtedly entry 81 in the Union list of the 7th schedule in terms of Article 246 of the Constitution of India reserves exclusive powers

in that regard to the Parliament and there is no entry either in the State list or concurrent list to empower the State Government to make any law in respect to subject of interstate migrants. Equally it is true that any law which would include any ordinance and regulations to be framed by the State shall not be inconsistent with Part-III of the Constitution nor shall seek to take away or abridge the rights of the citizens of this country conferred by the said Part-III of the Constitution.

8. It cannot be also disputed that Article 341 and 342 deals with the subject of the Scheduled Caste and Scheduled Tribes. Equally it is true that the Apex Court in the case of Action Committee Vs. Union of India (1994) 5 Supreme Court Cases, 244, was dealing with the issue relating to a person belonging to a caste or tribe specified for the purpose of the Constitution to be Scheduled Caste or Scheduled Tribe in relation to one State migrating to another State where a caste or tribe with the same nomenclature is specified to be a Scheduled Caste or Scheduled Tribe in relation to such another State, whether in those circumstances the person migrating would be entitled to claim the bonafides available to the such scheduled Caste and Scheduled Tribe in the migrated State. However, before proceeding to deal with

the rival contentions on this aspect it will be worthwhile to bear in mind the following observations by the Apex Court in the said decision.

> " But there are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other area should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas."

The Apex Court had also reiterated what was stated in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical

College, (1990) 3 Supreme Court Cases 130 by the Constitution Bench which reads thus :-

> " Scheduled Caste and Scheduled Tribe say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Caste and Scheduled Tribe say of the Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be basic approach to the problem"

After taking into account the decision of Constitutional Bench, the Apex Court in Action Committee case ruled thus :-

> " We may add that considerations for specifying a particular caste of tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a

caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

9. The Apex Court dealing with the matter relating to the rights of the migrants belonging to Scheduled Caste and Scheduled tribe, bearing in mind the scope of Article 341 and 342 of the Constitution of India and taking into consideration the decision of the

Constitutional Bench in Marry Chandra Shekhar's case held that merely because a particular community is specified in one State either as Scheduled Caste or as Scheduled Tribe or the back-ward class, that would not necessarily mean that if there be another caste bearing the same nomenclature in another State, then the persons belonging to former would be entitled to the rights, previleges and benefits contemplated to a member of such caste of the latter State. In other words, the Apex Court bearing in mind the problems of social adjustment and need for maintaining proper balance without causing detriment or discontent to the members of disadvantaged and disabled communities in the country and taking into consideration the nature and extent of disadvantages and social hardships suffered by members of various communities in various places in the country, laid down certain guide lines for the benefit of the Government while formulating the policy of reservations either in the employment sector or otherwise for giving due effect to the mandate of Article 15 (4) and 16(4) of the Constitution. Indeed the Government has been put on guard to ensure that while formulating any such rules, policy and giving effect thereto, the socially suffered communities of a particular locality should not be made to suffer further

by allowing similarly suffered communities from different places to take disadvantage of the policy and rules framed for the benefit of particular community in the specified area. The message given by the decision in Action Committee case is not restricted to the cases of Scheduled Caste and Scheduled Tribe. Proper reading of para 16 of the said decision in fact would reveal that the Apex Court has specifically referred therein even to "Backward Classes" while referring to Scheduled Caste and Scheduled Tribes. Being so, the care which the State Government has to take while giving protection to various communities including OBC in a particular area requires that such protection should not be allowed to be misused by the people of that community from different area, including or by resorting to the process of migration.

10. If one reads the Government Resolution dated 24th August 1995, it is apparent that the State Government has taken due care to give effect to the ruling of the Apex Court in Action Committee case in relation to the persons belonging to OBC in the State of Maharashtra so that the advantages and facilities made available to the members of OBC in Maharashtra are not misused by the members of same community from

other States. Article 15(4) of the Constitution clearly provides that the State is empowered to make any special provisions for the advantage of the socially backward class of citizens as also for Scheduled Caste and Schedule Tribes. Similarly Article 16(4) of the Constitution provides that the State is empowered to make any provision for the reservation to any backward class of the citizens which is not adequately represented in the services under the State. These provisions therefore, empower the State Government to make necessary provisions to provide appropriate facilities for social and educational advancement of the backward classes of citizens in the State, in addition to the members of Scheduled Caste and Scheduled tribes. Making of provision for the advancement of backward classes in the State and restricting such benefits for the citizens in the State is one thing and making specific provision prohibiting such benefits to the migrants is totally different thing. Merely because certain facilities or benefits are made available for the citizens of Maharashtra while defining who shall be called as citizens for availing such benefits that by itself would not empower any other citizen who does not fit in the expression so defined for the purpose of availing benefits under the Constitution to claim such benefits

nor it would amount to encroach upon the subject reserved for the Central Government under Entry 81 of the Union List of the VII Schedule. Restricting such benefits to the members of OBC from Maharashtra would not amount to legislating or making provision of law in relation to the subject of interstate migration. Being so, we do not find any illegality or infirmity in the Government Decision dated 24th August 1995 nor it encroaches in any manner the field reserved for the Parliament under entry relating to migrants. Being so, the challenge to the Government Decision dated 24th August, 1995 fails.

11. Undisputedly the decision of the Caste Scrutiny Committee as far as it relates to denial of benefits otherwise available to Kumbhar Caste of OBC category in the State of Maharashtra is essentially based on the decision and the Government Resolution dated 24th August, 1985. Undoubtedly the decision refers to mandate of the Constitution. It appears that the reference thereto must be either by mistake or oversight but the fact remains that judgment also refers to the Government decision and merely because there is wrong reference to another provision of law it can not be held that the decision is bad in law, if the decision

is valid and lawful and is in accordance with existing law otherwise than the one referred to in the document. As already seen above the decision of 24th August 1995 clearly disallows the benefits, which are otherwise available to the citizens of Maharashtra, to the others and to those who were not the residents of Maharashtra as on 13th October 1967. Being so no fault can be found with the decision, once the decision of the Government dated 24th August, 1995 is held to be neither bad nor illegal.

12. Hence, the Petition fails. Rule discharged with no order as to costs.

(SMT.ROSHAN DALVI, J.) **(SHRI.R.M.S. KHANDEPARKAR, J.)**